IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

Civil Appeal No.5141/2011

AJAY KUMAR RATHEE Appellant(s)

VERSUS

SEEMA RATHEE Respondent(s)

O R D E R

A marriage was solemnized inter-se the parties on 29.4.1998 at Rohtak as per Hindu rites, the parties resided together and the marriage was consummated. A daughter named Jyotsana was born on 20.2.2001. It is the case of the appellant that the respondent has been residing not with the appellant but in her father’s home after he passed away on 8.12.2002. A panchayat was convened on two separate occasions but it is the case of the appellant that the respondent refused to live with him in Ganaur. The appellant thus filed a petition for restitution of conjugal rights under Section 9 of the Hindu Marriage Act, 1955 but the same was dismissed on default on 07.10.2004.

We may note the case of the respondent was that the appellant had thrown her out of the matrimonial home in October 2004 after assaulting her. There was a demand of dowry by the appellant and her family, and she was harassed and tortured. The daughter has been throughout living with the respondent since birth, and thus the divorce petition.

The aforesaid respective stands are reflected from the pleadings of the parties in a divorce petition filed by the appellant under Section 13 of Hindu Marriage Act,1955 on grounds of desertion. The petition was tried. The learned Addl. District Judge, Sonipat found that no reconsideration was possible and there was no documentary or other evidence to prove the dowry demand.

The respondent aggrieved by the same preferred an appeal before the High Court which has been allowed by the impugned judgment dated 08.9.2009. On the appellant preferring the special leave petition, notice was issued and endeavor was made to resolve the dispute between the parties through Delhi Mediation Center in 2011 but nothing worked out and leave was granted on 04.7.2011.

On the appeal being taken up for hearing on 28.9.2021,

learned counsel for the parties stated that the parties are staying separately since 2002/ 2004 and that the parties will endeavor to work out a settlement and thus sought deferment of hearing.

On 05.10.2021, learned counsel for the respondent reported back stating that he had instructions that the respondent was not averse to a mutual consent divorce with the Court invoking its powers under Article 142 of the Constitution of India, without admitting the allegations made by the appellant while filing the divorce petition. We, however, put two caveats to it:

(a) the maintenance for the last 10 months fixed by the trial Court of Rs.8,000/- per month has not been paid.

(b) the sole child-daughter, has got admission to a college and the appellant must bear expenses for her education.

Learned counsel for the appellant assured that the arrears would be cleared and also agreed to submit his salary bills along with an affidavit setting out his assets which he owns privately, apart from his salary slip, to work out the financial terms of the separation. The respondent was also asked to do the same. We flagged the issue of

financial emoluments to be received by the respondent and the issue of the daughter's education and marriage. In order to develop and encourage a rapport between the daughter who is 20 years of age and the appellant, we requested learned counsel for the respondent to arrange a meeting between the two in the meantime.

On the next date of hearing, i.e. 27.10.2021, we referred the matter to the Supreme Court Mediation Center to work out a formal settlement and for the daughter to join the mediation proceedings.

The mediation report, however, came from the Mediator of an unsuccessful endeavor, as recorded by us on 07.12.2021. We had observed that the daughter, who is now aged about 20 years, would have to develop some interaction with the appellant-father if she wants him to play a role in her education. At the request of parties the matter was again referred to mediation but the report was one of failure and as per the learned counsel for the appellant, it became acrimonious and unpleasant in terms of the telephonic conversations, as recorded in our order dated 22.2.2022. We, thus, directed the matter to be put on the regular board in the week commencing 08.3.2022.

None appeared for the respondent in the pre-lunch session or in the post-lunch session. We have thus heard

learned counsel for the appellant and perused the records. On analysis of the impugned judgment what transpires is that the High Court has reversed the findings of the trial Court predicated on a reasoning that the only reliable evidence was of the appellant as PW-1 against that of the respondent.

We are faced with the scenario of failed marriage at least since 2004, if not since 2002 i.e., 18 years have passed and thus the chances of any reconciliation are impossible, more so in view of what has recently transpired during the mediation process.

Learned counsel for the appellant submits that *dehors* the divorce on ground of desertion, what he pleads now is that in any case a decree of divorce is liable to be granted on account of irretrievable breakdown of marriage by this Court invoking the jurisdiction under Article 142 of the Constitution of India.

Learned counsel has referred to a number of judgments[1] in this behalf to advance the proposition that where the parties have been living apart from a long period of time and all endeavor to save the marriage has failed, the Courts can dissolve a marriage as irretrievably broken down.

We have also taken note of *Sukhendu Das V. Rita*

1Sivasankaran V. Santhimeenal, C.A. No.4984-4985

Mukherjee [2], in which it is concluded that it is not open for the wife to contend that unless both parties consent, the exercise of jurisdiction under Article 142 of the Constitution of India for dissolving a marriage may not be appropriate.

In the present case, however, we have noticed the stand of the respondent in earlier proceedings that she was not disagreeable to the grant of a decree of divorce on account of irretrievable breakdown of marriage, without admitting the allegations made by the appellant against her in the divorce petition. This is of course subject to the two caveats referred to aforesaid.

The endeavor to settle the matter has not succeeded right from the family Court which took an active approach to endeavor reconciliation, but unsuccessfully.

The legal position emanating from various judgments does say that the Supreme Court can in special circumstances pass appropriate orders to do justice to the parties in a given factual scenario by invoking the powers under Article 142 of the Constitution of India and this was to the extent of granting a decree of divorce by mutual consent[3].

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2 (2017) 9 SCC 632, (2017) 4 SCC (Civ) 714

3 Soni Kumari v. Deepak Kumar, (2016) 16 SCC 346
Shilpa Sailesh v. Varun Sreenivasan, (2016) 16 SCC 352
Durga Prasanna Tripathy v. Arundhati Tripathy, (2005) 7 SCC 353
Geeta Jagdish Mangtani v. Jagdish Mangtani (2005) 8 SCC 177

We are unequivocally of the view that nothing really subsists in this marriage except mutual accrimony. It is not even possible for the parties to sit across the table or to even talk over telephone to come to a reasonable understanding. There remains no doubt about irretrievable breakdown of marriage in the facts of the present case. Thus, we are inclined to exercise our jurisdiction under Article 142 of the Constitution of India by granting a decree of divorce on the said ground.

The only question would be as to what should be the terms and conditions of divorce, looking to the financial status of the parties.

We have perused the affidavit of the respondent which states that she has practically no money and means, and lives with her brother who is supporting her and her daughter’s education.

We have also perused the affidavit of the appellant with documents insofar as his financial status is concerned. The appellant is working as a Wireless Operator in the Indian Coast Guard and his monthly income after deduction is Rs.42,492/-. However, amongst the deductions, he has claimed is a voluntary GPF subscription of Rs.35,000/- which cannot be considered for the purposes

of determining the amounts in the hands of the appellant. If that amount is added, the total emoluments of the appellant would amount to about Rs.78,000/- per month.

The appellant is about 52 years of age and thus would continue for the next few years till the age of 57 years.

The appellant has also stated that he has 1/8th share along with his mother, three sisters and four brothers in the joint ancestral agricultural land measuring 3.5 acres approximately in village Rajpura, Tehsil Gannaur, District Sonipat, Haryana, which has not been partitioned. Similarly he has 1/8th share in the joint ancestral house measuring 250 Gaj approximately in the same village. He has also mentioned that he owns a house measuring 107 Gaj in Gannaur, District Sonipat, Haryana wherein his mother is presently residing, and that he owns a plot measuring 100 Gaj in the same district. The appellant has three saving bank accounts which show balances of a little over Rs.9,00,000/-. The interim maintenance is stated to have been paid till September, 2021 as per the aforesaid affidavit.

In so far as the daughter's expenses for education and marriage are concerned, it appears from her approach that she does not want to maintain any relationship with the appellant and is about 20 years of age. She is entitled to

choose her own path but then cannot demand from the appellant the amount towards the education. We, thus, hold that the daughter is not entitled to any amount but while determining the amount to be paid as permanent alimony to the respondent, we are still taking care to see that if the respondent so desires to support the daughter, funds are available.

In view of the aforesaid factual matrix, we consider it appropriate to fix the permanent alimony of the respondent, at present being paid at Rs.8,000/- per month as interim maintenance, at Rs.10,00,000/- in full and final settlement of all claims. The amount be deposited in this Court within two months from today and would be released to the respondent. If the amount is not sought for a period of one month from the date of deposit, it will be kept in FDR earning interest for a period of 91 days to be kept renewed.

In the conspectus of the aforesaid, we grant decree of divorce on account of irretrievable breakdown of marriage between the parties exercising our jurisdiction under Article 142 of the Constitution of India, subject to the deposit of costs of Rs.10,00,000/- by the appellant.

A decree of divorce be accordingly drawn up and be released to the appellant on the deposit of the amount.

Civil appeal stands allowed, leaving parties to bear their own costs.

..................J.
(SANJAY KISHAN KAUL)

..................J.
(M.M. SUNDRESH)

NEW DELHI;
10th MARCH, 2022

ITEM NO.102 COURT NO.6 SECTION IV

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

Civil Appeal No.5141/2011

AJAY KUMAR RATHEE Appellant(s)

VERSUS

SEEMA RATHEE Respondent(s)

Date : 10-03-2022 This appeal was called on for hearing today.

CORAM : HON'BLE MR. JUSTICE SANJAY KISHAN KAUL
HON'BLE MR. JUSTICE M.M. SUNDRESH

For Appellant(s) Mr. Nidhesh Gupta, Sr. Adv.
Ms. Nidhi Gupta, Adv.
Ms. Vriti Gujral, adv.
Ms. S. Janani, AOR

For Respondent(s) Mr. Tarun Shokeen, Adv.
Mr. Sujeet Beniwal, Adv.
Mr. Abhishek Atrey, AOR

UPON hearing the counsel the Court made the following
O R D E R

Civil appeal stands allowed in terms of the signed order.

Pending applications stand disposed of.

(RASHMI DHYANI)
COURT MASTER

(POONAM VAID)
COURT MASTER

(signed order is placed on the file)